

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF SOUTH DAKOTA

3 NORTHERN DIVISION

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5 SIOUX RURAL WATER SYSTEM, \* 1:15-CV-1023-CBK  
INC., a Non-Profit  
6 Corporation,

\*

7 Plaintiff,

\*

8 -vs-

\* TRANSCRIPT OF  
\* STATUS HEARING  
\* December 21, 2016

9 CITY OF WATERTOWN, a South  
Dakota Municipality; and  
10 WATERTOWN MUNICIPAL  
UTILITIES, an Agency of the  
11 City of Watertown;

\*

12 Defendants.

\*

13 \* \* \* \* \*

14 TRANSCRIPT OF  
15 STATUS HEARING

16 BEFORE THE HONORABLE CHARLES B. KORNMANN  
UNITED STATES DISTRICT JUDGE  
17 ABERDEEN, SOUTH DAKOTA

18 \* \* \* \* \*

19 APPEARANCES:

20 Counsel for Plaintiff: MR. JEFFREY A. COLE  
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1 PROCEEDINGS held on December 21, 2016, 1:29 p.m.

2 THE COURT: Thank you for coming today. I  
3 don't hold pretrial conferences usually. I don't hold  
4 status hearings like most of the federal judges do. I  
5 think it's a colossal waste of time and money. But some  
6 of the federal judges at least do that once a year while  
7 the case is pending. I've never done that except maybe  
8 in a couple of cases.

9 The reason I wanted you to come up here for  
10 this is to tell you what I think the law is and to tell  
11 you what I think I'm going to do. I think this is a  
12 case that should be settled, frankly. But if you don't  
13 want to, that's fine, go to St. Louis, and spend some  
14 more money.

15 I'm concerned about the fact that it's --  
16 City of Watertown, if you will, and the Sioux Water  
17 company, I think that's -- could be a source of bad  
18 publicity, frankly. So I'm trying to avoid that. And  
19 I'm going to give you some period of time to try to work  
20 this out. It seems to me that it should be worked out.  
21 We're not talking about that many water users here. And  
22 there is a lot of uncertainty here.

23 I was the city attorney in Aberdeen for --  
24 assistant city attorney -- for 17 years or something  
25 like that before I took office in 1995. And I was

1 therefore very familiar with what Aberdeen was doing by  
2 way of expansion of the boundaries. Aberdeen has been  
3 very conservative on that. I don't think any areas have  
4 been annexed to the City of Aberdeen for many, many  
5 years. Watertown, on the other hand, has been very  
6 aggressive on that policy. I know that the Watertown  
7 city limits go all the way out to Lake Kampeska.

8 Whereas, in Aberdeen we don't include  
9 Rolling -- Rolling Meadows, Prairiewood, Jobee Acres,  
10 Richmond Lake, Mina Lake, the Warner Road property.  
11 There are a lot of areas that are very close to the city  
12 limits in Aberdeen that have never been annexed, which  
13 is fine. And so that probably causes some of the  
14 problems here.

15 Watertown in my opinion should not be  
16 providing water service to these annexed areas. I don't  
17 think that water users in the annexed areas have any  
18 right to tell the City of Watertown -- I'm just using  
19 the City of Watertown generically for both entities --  
20 that they have any right to tell the City that they want  
21 water service from them. They have no such right. That  
22 may be unwise public policy, but that's something that  
23 Congress did and it's something that I should not be  
24 interfering with.

25 Part of the problem here, of course, is that

1 Sioux -- I'm going to call them Sioux -- did not  
2 establish themselves as a rural water district with more  
3 definite boundaries. They were set up, as you know, as  
4 a not-for-profit corporation, which state law allows,  
5 and by their Articles of Incorporation they include  
6 Hamlin, Clark, and Codington counties. That's a very  
7 broad area. I'm sorry -- Codington, Hamlin, and Deuel,  
8 not Clark.

9                   And so like I can see how there could be  
10 some problems here and some disputes. I understand that  
11 Watertown claims that once they annex an area they can  
12 provide water service to the people in that annexed area  
13 who ask for it. They don't have that right in my  
14 opinion. Nor do the people who live there or who have  
15 businesses there have that right.

16                   SDCL 9-47-22 cannot be used to frustrate  
17 federal policy and federal law. Now, I understand that  
18 Sioux did not object to the use of that state statute in  
19 some cases of water service questions in the past, and  
20 did not perhaps properly assert their rights under 7  
21 United States Code, Section 1926(b). This in my opinion  
22 does not justify principles of estoppel or waiver being  
23 applied. Nobody can agree to waive federal law which is  
24 designed to guarantee that rural water systems are able  
25 to repay their federal loans. It may be unfair, but,

1 again, the Government, if you will, cannot be estopped.  
2 There are many, many cases on that.

3 The Defendant here has demanded a jury  
4 trial, whereas the Plaintiffs have not. I'm wondering  
5 if this case is not resolved if, in fact, the Defendants  
6 want a jury trial. These are not easy issues. I don't  
7 think there are that many factual disputes anyway.

8 Now, it may be that the Defendants want to  
9 get this case over with so you can get to St. Louis.  
10 And, if so, I'll make that possible. My thought was I'd  
11 give you maybe a month or so, whatever you think is  
12 reasonable, to give you a chance to go through either  
13 mediation or arbitration or something to figure out what  
14 it is you can agree are the Sioux boundaries; try to  
15 settle the thing in that manner. And, again, maybe you  
16 don't want to do that.

17 Now, some of the principles of law that I  
18 believe are applicable here, other than what I've  
19 already stated, you know what, and I'm not ruling on the  
20 record from the bench today too, I'm just telling you  
21 what I think. But it will give you a pretty good idea  
22 of what I'm going to do if necessary.

23 Any doubts as to whether the Plaintiff is  
24 entitled to a protection from competition from the  
25 Defendants should be resolved in favor of the Plaintiff

1 as an indebted party seeking protection under that  
2 federal statute, 7 U.S. Code, Section 1926(b). The  
3 statute should be given what some courts -- other courts  
4 have described as a "liberal interpretation" that  
5 protects rural associations from municipal  
6 encroachments.

7 We all agree I think that the pipes in the  
8 ground test should be applied. And the test is whether  
9 the Plaintiff has "made service available" to the  
10 disputed customers. Does the Plaintiff have adequate  
11 facilities within or adjacent to the area to provide  
12 service within a reasonable amount of time after a  
13 request for service is made. And I think we all agree  
14 that there must be both an adequate source and pipes in  
15 the ground or to be in the ground.

16 I don't think there's any dispute here about  
17 whether the qualifying federal loan or loans were --  
18 included financing for the type of service to be  
19 provided. In other words, I don't think any of this  
20 involved sewer services, for example. I think we're  
21 simply talking about water service. And the word  
22 "domestic" is thrown around and has various  
23 connotations.

24 Certainly domestic service does not include  
25 the right to -- or the obligation to provide water for

1 fire protection. In other words, if you live within the  
2 boundaries of the -- of the Sioux -- of the Sioux  
3 corporation, you take your chances and they're going to  
4 bring water out to your house in a truck just like they  
5 do in other rural areas.

6 Just like those of us who live at  
7 Prairiewood here say if your house is on fire you better  
8 get out because they're not going to be there to put out  
9 the fire. By the time the rural fire department gathers  
10 in Warner or south of Warner -- or I should say between  
11 Warner and Aberdeen and gets the people assembled and  
12 get the equipment on and drive 10 or 15 miles, whatever  
13 it is.

14 We know that the water service must conform  
15 to state law requirements as to health and sanitation  
16 codes. And the service may not be unreasonably costly  
17 or a delayed service. So what do those things mean?  
18 Those are very broad terms. But I think that's an issue  
19 to be decided in this case. In other words, that -- if  
20 you're -- if you're too slow in responding, or if what  
21 you're offering is unreasonable and excessive and  
22 confiscatory then you don't -- then Sioux doesn't have  
23 the right to provide service. But they don't have to  
24 provide service immediately. They have a reasonable  
25 period of time.

1                   The prices that they charge do not have to  
2 be the same as the City charges. They are entitled to a  
3 fair profit. There are various factors that the Court  
4 should consider, whether the Plaintiff is seeking to  
5 obtain more than a fair profit, whether the rate is  
6 disproportionate to the services provided, whether other  
7 similarly situated districts do not follow such  
8 practices, and if the practice establishes an arbitrary  
9 classification between or among various users.

10                  But it is the burden of the Defendants here  
11 to show that the costs of Plaintiff which are being  
12 charged to their customers are unreasonable, excessive  
13 and confiscatory. That is a very high burden.

14                  The Court is allowed to take into account  
15 whether fire protection services make the cost  
16 reasonable. I don't think that's an issue in this case  
17 because the district -- or the corporation is not  
18 required to provide fire protection water services.

19                  It is well established, although perhaps not  
20 in the Eighth Circuit, that the Plaintiff's inability or  
21 ability to provide water for fire protection is a factor  
22 which the Court should consider in deciding whether the  
23 Plaintiff has made service available.

24                  It is correct as the -- as Watertown alleges  
25 that the statute provides a shield and not a sword, thus

1 the Plaintiff has no right to seek to take away  
2 customers of Watertown as acquired before the loan was  
3 made or otherwise lawfully acquired by Watertown.

4                   The -- the City cannot enter into contracts  
5 with potential customers, as they did in at least one  
6 case here, within the service area, which require that  
7 potential customer to identify the City of Watertown.  
8 They cannot threaten to de-annex areas to obtain  
9 customers.

10                 Putting it in another fashion, "A city may  
11 not legally use inclusion of an area within the  
12 boundaries of any municipal corporation as a springboard  
13 for providing water service to the area and thereby  
14 limit the services made available by a protected water  
15 district," or in this case a corporation. A city may  
16 annex land within a water district's or corporation's  
17 boundaries as long as it does not use the annexation as  
18 a means to provide water service or limit the water  
19 district services to the annexed area. And I believe  
20 this is exactly what Watertown has been doing.

21                 The South Dakota statute 9-47-22 I believe  
22 flies in the face of federal law and regulations. The  
23 legislature may not set the terms of purchase by cities  
24 of customers within the service area of Plaintiff. The  
25 Court is going to be required -- or a jury perhaps -- is

1 going to be required on a customer-by-customer basis to  
2 determine whether or not the Plaintiff has, in fact,  
3 made water services available or is able to provide  
4 water services within a reasonable period of time.

5 Now, again, the difficult thing is what is  
6 the -- what is the service territory? It would have  
7 been much better, of course, if the water district had  
8 been set up or then the territory is spelled out by  
9 South Dakota law. But that wasn't done here. But,  
10 again, the Articles of Incorporation say Hamlin, Deuel,  
11 and Codington counties. That's an awfully broad area.

12 I'm not sure exactly what Defendants contend  
13 the service territory should be, and I'm not exactly  
14 sure at this point what I think the service area is as  
15 claimed by the district or the corporation. And, of  
16 course, we have questions on monetary damages. I doubt  
17 that those are big numbers by any means. And attorneys  
18 fees. That's why I think that hopefully this matter can  
19 be mediated or arbitrated to spell these things out.

20 I think, frankly, that the Plaintiff is  
21 entitled to a summary judgment, which includes an  
22 injunction enjoining Watertown from providing water  
23 service to any of Sioux's current customers, from doing  
24 what they've been doing by annexing areas and then  
25 allowing customers to request water service from

1 Watertown. They are probably entitled to an injunction  
2 or a summary judgment on the issue of whether Sioux  
3 should be required to provide fire protection to any  
4 customer. And summary judgment as to the Watertown's  
5 affirmative defenses of estoppel, laches, and waiver.

6 There's no doubt that if there were a  
7 dispute between private persons, the Plaintiff could  
8 certainly be found to be estopped because they have  
9 agreed to an unlawful practice. But they cannot agree  
10 to that because this is a federal law intended to  
11 protect the federal treasury.

12 Well, that's the good news and the bad news,  
13 I guess.

14 Do you have any comments or questions?  
15 Start with the Plaintiff.

16 MR. COLE: Your Honor, I don't have any  
17 questions. I guess I do think this is a case where  
18 mediation should be explored. We've had some  
19 preliminary discussions on that. We can check with  
20 counsel here, but I think we're willing to mediate.  
21 We've talked about even perhaps having a certain  
22 mediator, but that kind of came apart this fall. But I  
23 think 60 to 90 days to mediate it, perhaps even set a  
24 trial date if the Court is so inclined sometime after  
25 that. Gives us some pressure, some incentive to get the

1 case resolved if we can.

2 THE COURT: Okay. That's Mr. Cole that's  
3 speaking now. This hearing if you can call it that is  
4 being recorded so I think a court reporter -- you could  
5 hire a court reporter to transcribe what's being  
6 recorded here. A court reporter wasn't available today  
7 and I didn't think was necessary anyway because this is  
8 not a ruling -- any ruling or anything from the bench.

9 Okay. I thank you for that.

10 Do you have any comments, Mr. Hieb?

11 MR. HIEB: I do have one question because I  
12 think there's a -- maybe a --

13 THE COURT: You should stand, counsel.

14 MR. HIEB: Oh, excuse me. I always have a  
15 hard time. I'm too tall for the mic. Can you hear me  
16 okay?

17 THE COURT: Yes, I can.

18 MR. HIEB: I think there's some question  
19 about the definition of fire protection at least in my  
20 mind. I understand exactly what the Court is saying and  
21 I've read any number of cases where they talk about, you  
22 know, that a rural -- a district is not required to  
23 provide fire protection in the form of hydrants and  
24 mains with sufficient pressure to hook a hose up and put  
25 out a house fire.

1                   The question I think that's come up in the  
2 context of this case, and maybe it wasn't fleshed out  
3 that well yet in the briefs, really relates more to the  
4 fire protection needs of a particular commercial  
5 business that has a sprinkler system in it that  
6 obviously needs that in order to meet the building codes  
7 and to keep their business from burning down.

8                   Does the Court equate those two in the  
9 Court's analysis or is the Court simply talking about  
10 hydrants and what we normally think of when we think  
11 about fire protection for housing developments? Because  
12 the cases that I've read that's been the issue. You  
13 know, it's that big infrastructure and high pressure  
14 that needs to be there for that.

15                  THE COURT: My thought -- and of course this  
16 may very well be an issue of fact that we should have  
17 evidence on -- but as I looked at the file and all these  
18 documents, which I've looked at all of them, I think  
19 that really the only issue on that would be -- deal with  
20 Lou's Fireworks. I don't think an ordinary business has  
21 anymore need for fire protection, if you will, than some  
22 of these residents. That's my thinking on the thing.

23                  MR. HIEB: Okay.

24                  THE COURT: But again -- that's something,  
25 again, that could be factored into mediation or

1 arbitration or something. Common sense.

2 MR. HIEB: Sure. And I simply wondered  
3 because the Court had said that's my opinion on fire  
4 protection and I didn't know if you were including that  
5 in the broadest sense possible or if you were simply  
6 talking about what we normally talk about with hydrants  
7 and lines.

8 The second question that I have because I'm  
9 a little unclear about this. When you say the  
10 annexations that the City of Watertown has undertaken.  
11 Are you starting at some particular time there?

12 THE COURT: I think anything after the loan  
13 was made. Or the grant was made. No, it's a loan, I  
14 guess. It isn't a grant.

15 MR. HIEB: Okay. And then, finally -- and  
16 I'm asking you this because if we're going to sit down  
17 and mediate and try to resolve this we kind of have to  
18 have an idea of where the Court is at on this with  
19 respect to it --

20 THE COURT: I think you've taken a lot of  
21 their customers that you were not entitled to take.  
22 Depending on when -- I don't know how many annexations  
23 you have gone through since that loan was made. I don't  
24 know. Maybe it's not that many.

25 MR. HIEB: Well -- but, Your Honor, in the

1 example of a bare ground annexation, for instance, where  
2 there are no customers and then after the annexation  
3 occurs people build houses and we start serving them  
4 with water. If I understand the Court's analysis,  
5 that's not a violation of this federal statute, we're  
6 not taking their customers, unless -- unless we're  
7 considering that bare ground to be some exclusive  
8 territory of theirs.

9 And that's where I was a little bit confused  
10 because I think the majority of our annexations -- or at  
11 least the ones that involve residential types of  
12 situations were bare ground annexations. And that where  
13 I -- I don't know that the record is that complete when  
14 it comes to the nature of these annexations that the  
15 Court may be referring to.

16 Because I think the record would reflect  
17 that there have only been three actual customers that  
18 were hooked up to Sioux that are now being served by  
19 Watertown Municipal Utilities. That's what we were able  
20 to identify.

21 THE COURT: Three customers that have  
22 changed?

23 MR. HIEB: That arguably have changed. I  
24 mean, in the one case you had an abandoned farm and it  
25 became Titan Machinery. That abandoned farm as I

1 understand it had been previously served by Sioux at one  
2 time. So there was a water service there. But  
3 that's -- that's what I believe the record reflects.

4 THE COURT: I think what I'm saying is that  
5 any annexation is immaterial. If you annex areas within  
6 their service territory, again, whatever it is, then you  
7 cannot hook up people who later build in that area.

8 MR. HIEB: And therein lies the dilemma from  
9 our standpoint, obviously. I guess until -- and I don't  
10 -- I guess maybe I can engage in a colloquy with the  
11 Court on that issue. I don't really believe, frankly,  
12 that what is their territory is a question of fact for a  
13 jury anyway. I mean, I think that is a decision that's  
14 going to need to be made by the Court at some point in  
15 time.

16 THE COURT: Well, perhaps. That's a good  
17 question.

18 MR. HIEB: And I really think which is much  
19 of what Mr. Peterson was driving at in our briefs in  
20 this case. And I never try to take credit for his  
21 briefs because they're better than what I write. That  
22 is really the seminal question that until it's answered  
23 there's no way to say that, you know, what's been done  
24 is wrong or right. Because as I pointed out, there to  
25 our knowledge are only three customers that were ever

1 hooked up -- and that's arguably three -- that were  
2 later hooked up and later switched over. I think the  
3 rest of the testimony that the Court is referring to is  
4 referring to I guess hypothetical situations, which  
5 really haven't occurred at this point.

6 THE COURT: In my opinion the policy of  
7 Watertown allowing people within annexed areas to ask  
8 for water service and get it, that's illegal.

9 MR. HIEB: Unless that annexed area is not  
10 part of their territory.

11 THE COURT: Well, that's true. I mean, if  
12 they are unable to serve it.

13 MR. HIEB: Well, I guess that's my question.  
14 If the pipes in the ground test, if the ability to serve  
15 is going to be the sole determining factor on defining  
16 their territory, then I think their territory is largely  
17 unlimited. I mean, I think that, you know, if we're  
18 going to use three counties, then the entire city of  
19 Watertown lies within their territory if they're going  
20 to be allowed to self-define their territory.

21 THE COURT: Well, clearly that wouldn't  
22 be -- that would be impossible. That's -- obviously  
23 those three counties are way too big to comprise their  
24 territory.

25 MR. HIEB: I would agree with that, Your

1 Honor.

2 THE COURT: Within that -- the pipes in the  
3 ground is a big matter that's for sure. Or that they  
4 will put pipes in the ground.

5 MR. HIEB: I agree with that. But, once  
6 again, that can't be the unlimited test. I mean,  
7 because with all candor, Your Honor, looking at the  
8 cases that I've read, city limits are irrelevant, which  
9 I think the undisputed testimony in this case is we  
10 understand that. And they seem to believe that.

11 So when you say, well, that's impossible  
12 that they could have all three of those counties, I'm  
13 not sure what limits it if there isn't going to be some  
14 limit placed. And that's the difference between an  
15 entity that is not governed by anyone. If they would  
16 have gone to the State of South Dakota and asked for a  
17 district and tried to include, you know, areas that the  
18 state would have said, no, no, no, you're not going  
19 there, then, you know, there's a limitation. And I just  
20 think under this rhetoric there isn't one. You know,  
21 they can do as they please and in this case come to the  
22 party essentially.

23 THE COURT: Well, they may be asking for too  
24 much, I don't know. As to what has happened thus far, I  
25 don't think they're asking for too much. I think

1       they're entitled to it. That's why mediation and  
2       arbitration is a good thing. This is not the typical  
3       case.

4                    MR. HIEB: I think you've answered my  
5       questions.

6                    THE COURT: All right. Thank you.

7                    You know, as I've said many times, the only  
8       advantage that I know of in going to federal court under  
9       all the rules and regulations that are very difficult to  
10      follow sometimes, is that you can get a free mediation  
11      session if you want it. Now, back when Judge Simko was  
12      a full-time magistrate in Sioux Falls he was a great  
13      mediator because he has tried hundreds of cases as a  
14      lawyer. I don't know about the capabilities of other  
15      magistrate judges. I would not expect a part-time  
16      magistrate to agree to a free mediation so that rules  
17      out Judge Moreno in Pierre and Judge Gerdes here and the  
18      magistrate in Rapid City. So the only full-time  
19      magistrate is Judge Duffy in Sioux Falls.

20                  I frankly don't know how many cases she  
21      tried as a lawyer. I've only had her mediate one case  
22      and that didn't work. But the parties themselves worked  
23      out something the next week or so. I used to use a  
24      magistrate from Fargo, Judge Kline who was a full-time  
25      magistrate but she has retired.

1                   So I really don't know what's available in  
2 that regard. You might be better off just to hire  
3 somebody who would do that. There's lots of them in  
4 Sioux Falls that's for sure.

5                   Well, any other questions or comments? Do  
6 you want me to wait to see if you can work it out?

7                   MR. HIEB: As far as we're concerned, yeah.  
8 Your Honor. I'd like to talk to my clients and I'd like  
9 to at least try to explore it.

10                  THE COURT: Give them some of the bad news,  
11 that's right.

12                  MR. HIEB: They're sitting here, Your Honor.

13                  THE COURT: All right. Okay. Well,  
14 somebody is always unhappy regardless of how I rule.

15                  MR. COLE: That's fine with us too, Your  
16 Honor.

17                  THE COURT: Okay. Well, I'm going to  
18 Florida January 9th and I won't be back until late  
19 April, maybe early May, and I've got a terrible  
20 caseload. Business is booming here. I've got more  
21 civil cases pending than they have in Pierre, and the  
22 number of criminal cases is really exploding also. And,  
23 of course, I've got to deal with those criminal cases  
24 first since some of those people will be in jail for all  
25 of that time. But I'll just wait and will you let me

1 know -- let's give you what, two months? That ought to  
2 be enough time. And you're going to know, either it's  
3 going to go or it's not going to go by that time. And I  
4 would say you should take a shot at working out  
5 questions of attorneys fees, damages, and the service  
6 territory. And so it's a give and take obviously like  
7 anything else.

8                   Mr. Hieb?

9                   MR. HIEB: If we can't get it worked out  
10 would it also be beneficial to the Court to address some  
11 of those other issues that the Court has brought up  
12 about jury trial --

13                   THE COURT: Yes.

14                   MR. HIEB: -- or if we want a quicker trip  
15 to St. Louis the Court will accommodate us, that sort of  
16 thing?

17                   THE COURT: That's right. I don't think a  
18 jury trial here makes much sense. That's up to you.  
19 Let's see, the Plaintiff didn't ask for one.

20                   MR. HIEB: We're going to maintain ours if  
21 we do need to go to trial, Your Honor.

22                   THE COURT: Okay. That's fine. Sure.  
23 Juries don't make very many mistakes in my experience.  
24 In the nearly 22 years I've been on the bench I've set  
25 aside one jury verdict and that was where the jury found

1 against the IRS. That wasn't surprising. I was  
2 affirmed by the Eighth Circuit on that. But generally  
3 juries do the right thing.

4               Okay. Anything else?

5               MR. COLE: No, Your Honor.

6               THE COURT: Okay. If you want to get as I  
7 say a transcript of this so you get it down I think that  
8 would be available. I don't think you can simply get a  
9 copy of the recording; is that right? She says you  
10 can't get that. But a court reporter could listen to  
11 that. Do either of you want that done?

12              MR. HIEB: We may, I think, you know, just  
13 to have something to refresh ourselves a little bit if  
14 we're going to be trying to resolve this.

15              THE COURT: And to show your clients.

16              MR. HIEB: Right.

17              MR. COLE: We would, Your Honor.

18              THE COURT: Yeah. Well, why don't you  
19 call -- we'll call Cheryl? Or call Leslie, Judge  
20 Moreno's secretary. She's a court reporter in Pierre.  
21 What's her last name? Leslie Hicks, that's right,  
22 sorry. So just give her a call at the magistrate's  
23 office at the courthouse in Pierre and she'll do that  
24 for you. If you want to split the cost or something, I  
25 don't know.

1               Okay. That's good. The briefs filed by the  
2 parties have been very good. They've been very helpful  
3 to me and I appreciate that. We have lawyers on both  
4 sides that are good lawyers so that's good. I don't  
5 always have that, unfortunately.

6               Okay. Anything further? If not, have a  
7 Merry Christmas everybody. Court's in recess.

8               (End of proceedings at 2:03 p.m.)

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1 STATE OF SOUTH DAKOTA. )  
2 COUNTY OF HUGHES )  
3  
4 ) CERTIFICATE

4 I, Leslie Hicks, Notary Public and Registered  
5 Professional Reporter in and for the State of South  
6 Dakota, do hereby certify that the Transcript of the  
7 Status Hearing contained on the foregoing pages 1  
8 through 23, inclusive, were reduced to stenographic  
9 writing and thereafter transcribed; that said FTR  
10 recorded proceedings commenced on December 21, 2016, in  
11 the Courtroom of the United States District Courthouse,  
12 Aberdeen, South Dakota, and that the foregoing is a  
13 full, true and complete transcript of my shorthand notes  
14 of the FTR recorded proceedings had at the time and  
15 place above set forth.

16 Dated this 5th day of January, 2017.  
17  
18

19 /s/ Leslie Hicks  
20 Leslie Hicks  
21 Registered Professional Reporter  
22 225 S. Pierre Street, #413  
23 Post Office Box 7147  
24 Pierre, South Dakota 57501  
25 (605) 945-4612  
Leslie\_Hicks@sdd.uscourts.gov